

### REMARKS

With this amendment, Applicant has amended claim 22. Upon entry of this amendment, claims 1-31 will be pending. Claims 2, 27, and 28 are under Examination.

Claim 22 was amended to conform to U.S. practice. Support for this amendment can be found, for example, in original claims 22-25 and page 27, line 28 to page 30, line 16 of the specification. Accordingly, amendment does not add new matter and its entry is respectfully requested.

The Examiner has indicated that claim 1 is withdrawn. Applicant respectfully submits that claim 1 is merely generic to the elected species and therefore should be examined.

#### Foreign Priority

The Examiner acknowledged that Applicant filed foreign priority document Fr. 0314152, filed December 2, 2003; and Fr. 0314151, filed December 2, 2003. Office Action at page 4. The Examiner, however, stated that since English translations of the foreign priority documents were not filed, Applicant's priority date was deemed to be December 2, 2004, the filing date of PCT/FR04/03105. *Id.* Applicant respectfully disagrees with the Examiner's assertion, but will address priority elsewhere. *See also* 37 C.F.R. 1.55 (a)(4)(i) (setting forth the situations when English translations of non-English language foreign applications are required).

#### Objection to the specification

The objection to the specification is rendered moot by Applicant's amendment.

Claim objections

Claim 2 and claim 21 were objected to for allegedly depending from a withdrawn claim and encompassing a non-elected invention, respectively. Office Action at page 5. Applicant will amend the claims as necessary at a later date, pending prosecution of the elected species.

Rejections under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a)

Claim 29 stands rejected under 35 USC § 102(e) as allegedly anticipated by U.S. Patent Application Publication No. 20070105193 by Vilalta *et al.* (*Vilalta*), relying on its claim of priority to provisional application number 60/482,505, filed June 26, 2003.

Claims 2, 28, and 29 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over *Vilalta*. The Examiner alleges, *inter alia*, that *Vilalta* teaches a composition comprising the polypeptide of the S protein of SARS-CoV Urbani strain, wherein the polypeptide of SEQ ID NO:2 consists of amino acids 1-1196 of S protein. Office Action at page 5.

Applicant respectfully traverses these grounds for rejection. With this Response, Applicant is filing a Declaration under 37 C.F.R § 1.131 by Nicolas Escriou, an inventor of the subject application (*Escriou Declaration*). The *Escriou Declaration* establishes that Applicant had reduced the claimed invention to practice prior to May 16, 2003—the earliest priority date claimed by *Vilalta*. In particular, the *Escriou Declaration* establishes that Applicant had deposited two overlapping cDNA clones that encode the entire open reading frame of the SARS-CoV S protein with the Collection Nationale de Cultures de Microorganismes (CNCM) on May 12, 2003. See also paragraphs [0361]-[0363] and Table 1 of the published application. Accordingly, *Vilalta* is not prior art to this application for 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a) purposes and the

rejections under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) should be withdrawn. See M.P.E.P. § 2136.05.

Applicant respectfully requests examination of at least claims directed to additional species of S protein and rejoinder of claims directed to methods of using S protein, pursuant to the Response to Restriction Requirement filed March 26, 2009. Applicant reiterates the argument of the Response to Restriction Requirement that, at a minimum, the immune complex of claims 26 and 27 should also be examined, since the immune complex contains the polypeptides of the elected invention.

**CONCLUSION**

The Examiner is encouraged to call the undersigned with any questions. Please grant any extensions of time required to enter this amendment and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: November 10, 2009

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**Attachments:**

Declaration under 37 C.F.R § 1.131, including Exhibits 1-5.  
Information Disclosure Statement.